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80-2156
Docket No.

In the Supreme Court of the United States

October Term, 1980

GENERAL DEVELOPMENT & SHIPPING ENTERPRISES CO., LTD.
Petitioner,

v

STEPHEN J. MOREWITZ, etc., et el
Respondent

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

John R. Crumpler, Jr.
Seawell, McCoy, Dalton, Hughes, Gore & Timms
936 Wainright Building
Norfolk, Virginia 23510
Attorneys for Petitioner

I.

QUESTIONS PRESENTED

1. Whether the holding that G.D.S.E. was doing business in Virginia so as to subject it to the court's jurisdiction is contrary to World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) and Hanson v. Denckla, 357 U.S. 235 (1958)?

2. Whether Gulf Oil Co. v. Gilbert, 330 U.S. 501 (1947) applies with equal force to disputes between foreigners?

3. Whether the lower court's refusal to exercise its discretionary power to decline subject matter jurisdiction over suits between foreigners is at odds with Lauritzen v. Larsen, 345 U.S. 571 (1953)?

4. Whether by judicial decree, the courts of the United States should open their doors to all disputes of all peoples of all nations?

5. At least as to the Greek claimants, whether the court should have declined jurisdiction?

II.

LIST OF PARTIES

Pursuant to Rule 21.1(b), Rules of the Supreme Court, counsel for Petitioner certifies that the following is a complete list of all parties to the proceedings below and additionally, all parties and persons believed to be interested in the outcome of this Petition;

1. Stephen J. Morewitz, administrator of the estate of Christos Passalis; of the estate of Constantinos Stamatis; of the estate of Gerassimos Markatos; of the estate of George Marangos; of the estate of Efran A. Martinez; and of the estate of Mukhtar Ahmed.

2. Zorka Passalis, wife of decedent Christos Passalis.

3. Helene Passalis, minor daughter of decedent Christos Passalis.

4. Elene Passalis, mother of decedent Christos Passalis.

5. Panagiotis Passalis, father of decedent Christos Passalis.

6. Afrodite Stamatis, wife of decedent Constantinos Stamatis.

7. Athena Stamatis, mother of decedent Constantinos Stamatis.

8. Andreas Markatos, father of decedent Constantinos Stamatis.

9. Anastasia Markatos, mother of decedent Constantinos Stamatis.

10. Anna Marangos, wife of decedent George Marangos.

11. Andreas Marangos, daughter of decedent George Marangos.

12. Ekaterina Marangos, daughter of decedent George Marangos.

13. Georgia Marangos, daughter of decedent George Marangos.

14. Felix Mayorquin, father of decedent Jesus Ramos Mayorquin.

15. Guillermina Mayorquin, mother of decedent Jesus Ramos Mayorquin.

16. Efran Martinez, father of decedent Efran Alvarado Martinez.

17. Priscilla Martinez, mother of decedent Efran Alvarado Martinez.

18. Gulzar Ahmed, father of decedent Mukhtar Ahmed.

19. Khatoon Ahmed, mother of decedent Mukhtar Ahmed.

20. Zulfegar Ahmed, brother of decedent Mukhtar Ahmed.

21. Iftikhar Ahmed, brother of decedent Mukhtar Ahmed.

22. Ijoz Ahmed, brother of decedent Mukhtar Ahmed.

23. Counsel for above parties.

24. General Development & Shipping Enterprises Co., Ltd.

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OPINION BELOW

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit is not reported, but is printed in the separate Appendix filed with this Petition, infra A1. The Memorandum Order (opinion) of the district court is not reported but is set forth in the Appendix at A5.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

These are civil actions under F.R.C.P. 9(h) for wages and damages for wrongful death as a result of the presumed sinking of the SS IMBROS in the Bermuda Triangle in December, 1975. The first Complaint filed was by Ruth A. Morewitz, as Administratrix of the estates of crewmen Stamatis, Passalis, Marangos and

Markatos against Imbros Shipping Co., Ltd., General Development & Shipping Enterprises Co., Ltd. and others not pertinent to this appeal. On July 15, 1976, process was purportedly served on General Development by service on the Clerk of the State Corporation Commission of Virginia. On August 4, 1976, General Development filed a Motion to Quash Service of Process and on August 8, 1977, filed a Motion to Decline Jurisdiction. Various supplemental and intervening Complaints were thereafter filed in behalf of other families.

In November, 1976, process was purportedly served on the defendant Imbros Shipping Co., Ltd. (the registered vessel owner) via the Secretary of the Commonwealth of Virginia and on or about December 3, 1976, Imbros Shipping filed a Motion to Quash Service of Process. The Motion came on for hearing by district judge MacKenzie and in a Memorandum Order dated

January 20, 1977, (A14) the motion to quash service of process was granted on the grounds that the plaintiff could not show a single business transaction within the forum.

On August 24, 1978, a Memorandum Order (A5) was entered overruling General Development's Motion to Quash Service of Process.

On March 26, 1979, after months of harassing discovery the district court entered an order finding G.D.S.E. in default for failure to respond to discovery and ruled G.D.S.E. was the owner pro hac vice as a matter of law. On July 27, 1979, the matter was tried on liability by the court. Neptune International and Continental Lines, the other defendants then parties were dismissed, and General Development was found to be liable to the various plaintiffs. Damages were tried on January 3, 1980, and on April 3, 1980 an order was entered

granting judgment in favor of the following claimants in the following amounts.

Christos Passalis	$105,600.00
Constantinos Stamatis	126,692.80
Gerassimos Markatos	58,675.00
George Marangos	88,158.24
Jesus Ramos Mayorquin	34,864.60
Efran Alvarado Martinez	18,001.12
Mukhtar Ahmed	27,464.60

General Development filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit on April 23, 1980; oral argument was conducted on April 9, 1981; on April 24, 1981, the Fourth Circuit issued a per curiam opinion summarily affirming the district court's decisions and awards.

STATEMENT OF FACTS

The SS IMBROS was a Cypriot flag vessel owned by Imbros Shipping Co., Ltd. and managed by the appellant, General Development & Shipping Enterprises Co., Ltd., both Cypriot companies. On December 18, 1975, the SS IMBROS was lost on the high seas in the Bermuda

Triangle, while en route from Mobile, Alabama, to Port Carrier, Quebec, Canada,[1] presumably resulting in the loss of all the crew. At the time in question, the vessel was under a long term time charter to Continental Lines, S.A., a foreign corporation, and for the particular trip in question was voyage chartered to Neptune International Shipping, Ltd. The cause of the sinking and disappearance is unknown. All that was heard from the vessel were two May day messages.

The Greek crewmen, Passalis, Markatos, Marangoes and Stamatis, signed employment contracts in Greece. Mayorquin and Martinez were employed in Honduras and Ahmed was employed outside of the United States, somewhere in Central America. Messrs. Stamatis, Passalis, Markatos and Marangos were citizens and life

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1. The last time the IMBROS had been in Virginia was April 1974.

long residents of Greece; Martinez and Mayorquin were citizens and residents of Honduras; and Ahmed was a citizen and resident of Pakistan.

Imbros Shipping Co., Ltd. and General Development & Shipping Enterprises Co., Ltd. were ultimately owned by Mr. George Tsourinakis who was a resident and citizen of Greece and had no residency in any other countries. The IMBROS and all other G.D.S.E. managed vessels were operated from Greece and had no U.S. operational contracts. All G.D.S.E. employees lived in Greece.

Lavino Shipping, who from time to time acted as local husbanding agent for various G.D.S.E. managed vessels, was hired by G.D.S.E. to act on behalf of the various owning companies, not on behalf of itself.

General Development always acted only as agent for the vessel's owner for the employment of seamen such as the ones under consideration and was not directly responsible for

the payment of any claims or wages.

G.D.S.E. maintained no office, no employees, owned no property or bank accounts or other assets within the State of Virginia. G.D.S.E. never solicited, transacted or obtained any freight business in Virginia, either directly or through an agent; G.D.S.E. never designated an agent in Virginia on whom process can be served.

The vessel owning companies made all of the decisions as to chartering, repair and manning of the various vessels. The charterers directed each vessel to the various ports of call and the cargo to be loaded on board. Ultimately the vessel owning companies not the manager maintained full control over the navigation, management and physical operation of each vessel managed by General Development.

Several families of deceased crewmen from the IMBROS filed suits or claims in Greece, namely Soursos, Sandalakis, Zorbas, Thambasis,

Zaher, Vassilakakis and Costoglou. All of these claims and suits were disposed of by judgment or compromise settlement in Greece. Counsel representing the vessel owner in Greece did not contest jurisdiction of the Greek courts and in fact accepted jurisdiction. Had objection been made to jurisdiction it would not have succeeded because the employment contracts had been signed in Pireaus. As far as the non-Greeks are concerned the fact that they concluded a work contract in Greece would have precluded any objection to jurisdiction. Furthermore, even as to those who did not sign employment contracts in Greece the court would have accepted jurisdiction because of the existence of the manager in Pireaus plus the fact that the operation in fact was from Pireaus.

The families of the various crewmen lost on the IMBROS had rights to bring actions for workmen's compensation under Greek Law 551 or for damages under the Civil Code, the latter

being for fault which would include negligence or unseaworthiness. All settlements were effected under the provisions of law 551.[2]

REASONS FOR GRANTING THE WRIT

I. CONFLICTS WITH DECISIONS OF THIS COURT

The lower courts' decisions conflict with World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), and Hanson v. Denckla, 357 U.S. 235 (1958).

The district court casually brushed aside the challenge to its in personam jurisdiction. The Fourth Circuit affirmed per curiam likewise without reason or authorities.[3] This Court should not permit such superficial treat-

2. This certainly reflects that claimants' Greek attorneys' thought that there were no facts on which to base a claim of culpability or fault.

3. Indeed the Fourth Circuit may have been confused because it mentioned the Virginia long arm statute which was in no way involved. Obviously, process could not have been validly issued under that statute since the cause of action arose either at Mobile or on the high seas.

ment of basic judicial rights.

General Development was purportedly served with process via the Clerk of the Virginia State Corporation Commission §8-60 of the Code of Virginia (1950) which was a "doing or transacting business" statute. The pertinent jurisdictional facts are as follows:

1. G.D.S.E. was a Cypriot company doing business in Greece, which acted as a ship manager.

2. It maintained no office and had no employees in the United States.

3. It owned no assets of any nature in Virginia.

4. It never solicited nor obtained any freight, either directly or indirectly in Virginia.

5. It never designated an agent on whom to serve process.

6. It conducted its business from offices in Piraeus, Greece.

7. The vessels it managed were under charters to other companies.

8. The destinations and cargoes were determined, as is usual, by the charterers.

9. It appointed local husbanding agents for owners, vis a vis charterers' business[4] who were then acting as agent for owners. 3 Am. Jur. 2d Agency §7

10. It had an employee in Virginia only once, for a few days in December, 1975, prior to the sinking, because of problems in a redelivery of another vessel.

The district court erroneously concluded that "many calls" of G.D.S.E. vessels subjected it to jurisdiction in Virginia.

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4. Under charter parties each party, the owner and charterer, have duties and responsibilities. Typically each will need an agent in a port - the owner for such things as crew matters and the charterer for cargo disposition.

First, relatively speaking they were insignificant - less than 1% of calls to all ports combined over a three to four year period. This volume does not fit within the Fourth Circuits' own test of "fairly substantial contacts." See Grivas v. M/V OLYMPIC PEGASUS, 557 F.2d 65, 68 (4th Cir. 1977).

Second, and more importantly for purposes of certiorari, the district court was of the mistaken view that a call of a G.D.S.E. managed vessel was tantamount to business done by the manager. While it certainly is tantamount to business being done by the charterer, and probably the owner, it does not constitute ipso facto business being done in Virginia by the manager. Is an Athens ship chandler doing business in Norfolk each time a vessel it services calls there?

Third, even if vessel calls constitute "doing business" by G.D.S.E., it could never be

characterized as purposeful activity.

In World-Wide Volkswagen, supra, the Court reaffirmed the principle announced in Hanson v. Denckla, 357 U.S. 235, 253 (1958) that only when a corporation "purposefully avails itself of the privilege of conducting activities within the forum State", may it be hailed into court. The reason is that only then is the corporation on clear notice as to where it can be sued and thus take appropriate steps to alleviate the risks.

Here the charterer not G.D.S.E. directed the itineraries of the vessels and profited (or not) as a result of the cargoes and business activities. In short, only the various charterers "purposefully" conducted business in Virginia.

G.D.S.E. is like World-Wide and the charterers are like the purchasers of Volkswagens. When a vessel was chartered it was foreseeable it would be directed to Virginia,

just as it was foreseeable a purchaser of a Volkswagen would drive to Oklahoma.

> "But the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State: Hanson v. Denckla, supra, at 253, 78 S.Ct. at 1239-1240." World-Wide Volkswagen Corp. v. Woodson, supra, 100 S.Ct. at 567.

G.D.S.E. revenues accrued regardless of where the vessels called. The fact that revenues accrued because the ships were capable of calling in Virginia has been rejected by the Court as a rationale for jurisdiction. World-Wide Volkswagen Corp. v. Woodson, supra, at 568.

The decision below clashes with this Court's two landmark decisions discussed above and for this reason must be reviewed.

Furthermore, the decision below cannot be reconciled with other more carefully considered decisions of the Fourth Circuit.

In Ratliff v. Cooper Laboratories, Inc., 444 F.2d 745 (4th Cir. 1971), the plaintiffs suffered injuries from the consumation of drugs. The question was whether the defendant drug companies were amendable to suit when the offending drug was neither purchased nor consumed in the forum. The court opined,

> "Here the activities of the defendant corporations in South Carolina, although possibly sufficient to constitute 'presence' are nonetheless minimal. Neither maintains an office in South Carolina, and neither warehouses goods there. With the exception of the samples and materials used by Sterling's detail men, neither has any real or personal property in the state. Nor does either maintain a bank account in the state or advertise in directories there (although advertisements do appear in national medical journals which subsequently find their way into the state). The presence of Sterling's detail men in South Carolina and the appointment of an agent for service of process in accordance with South Carolina law does not, we think tip the scale for plaintiff Nichols. We think the application to do business and the appointment of an agent for service to fulfill a state law requirement is of no special weight in the present context. Applying for the privilege

> of doing business is one thing, but the actual exercise of that privilege is quite another. See, International Shoe Co. v. Washington, supra, 326 U.S. at 319, 66 S.Ct. 154. The principles of due process require a firmer foundation than mere compliance with state domestication statutes." P. 748.

How can Sterling, who had appointed an agent for service of process and hence obviously expected to defend suits there, avoid jurisdiction, and G.D.S.E. be amenable?

POINT II.

CONFLICT BETWEEN THE BELGENLAND AND GULF OIL CO. v. GILBERT

In ruling that the "Defendant has failed to persuade us of the sina qua non for dismissal on grounds of forum non conveniens: the availability to plaintiff of an alternative and adequate forum," the district court below placed the burden on the defendant. See Gulf Oil Co. v. Gilbert, 330 U.S. 501 (1947). The petitioner believes Gulf Oil Co. should be con-

fined to suits where an American citizen is the plaintiff. See States Marine Lines, Inc. v. The M/V KOKEI MARU, 180 F.Supp. 255 (N.D.Calif. 1960).

In THE BELGENLAND, 114 U.S. 335 (1885) this Court expressly recognized two different standards in determining whether American admiralty courts should retain jurisdiction over suits between foreigners. In ship collision cases the rule is that jurisdiction should be retained absent special circumstances demonstrating that justice would be better served by a declination. 114 U.S. at 37.

However, the court carefully distinguished claims by members of a foreign vessel's crew against their employer. As to these internal matters, jurisdiction should be relinquished absent a special reason.

> "...the case of foreign seamen is undoubtedly a special one when they sue for wages under a contract which is generally strict in its character

> and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interests of the shipowners as well as those of master and crew, as well as when the ships is abroad as when she is at home. Nor is this special character of the case entirely absent when foreign seamen sue the master of the ship for ill-treatment. On general principles of comity, admiralty courts of other countries will not interfere beween the parties in such cases unless there is special reason for doing so..." 114 U.S. at 364.

Therefore, there is a conflict between THE BELGENLAND, supra, and Gulf Oil Co. v. Gilbert, supra, to the extent one requires declination of jurisdiction absent special circumstances and the other retention absent special circumstances. Hence this problem should now be resolved by this Court.

POINT III

CONFLICTS WITH LAURITZEN v. LARSEN

The district court acknowledged that the governing law was found in Lauritzen v.

Larsen, 345 U.S. 571 (1953), and Hellenic Lines Limited v. Rhoditis,[5] 398 U.S. 306 (1970), and then completely ignored these two cases.

In Lauritzen, supra, this court listed seven factors to be considered. They are listed below with the appropriate remarks necessitated by the case at hand.

		Our Case
1.	Place of Wrongful Act.	High Seas
2.	Law of the Flag	Cyrus
3.	Allegiance of Domicile of Injured	Greece
4.	Allegiance of Defendant	Greece
5.	Place of Contract	Greece and Central America
6.	Inaccessibility of Foreign Forum	Greek Courts Available
7.	Law of the Forum	United States

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5. While these cases deal specifically with only the issue of choice of law, it is well accepted that the same considerations apply to discretionary jurisdiction over suits between foreigners. See Anastasiadis v. S.S. LITTLE JOHN, 346 F.2d 281 (5th Cir. 1965) cert. denied 384 U.S. 920 (1966).

The Court in Rhoditis, supra, merely added an eighth factor - base of operations. This need not be discussed since it was never argued by the claimants that the base of operations of G.D.S.E. was the United States.

There was no real dispute between the parties concerning the answers to the above seven questions except No. 6, INACCESSIBILITY OF FOREIGN FORUM. There was only one witness, a Greek attorney, Nicholas Domvros, who testified as an expert for G.D.S.E. He clearly states that in his opinion Greek courts would entertain all of these actions. He did acknowledge that it was a possibility that the Greek courts would decline jurisdiction in suits brought by non-Greeks.

To the extent Gulf Oil, supra, (see Point II infra) is applicable certainly it does not require an endorsement of the plaintiff's choice of forum just because there is a possibi-

lity that another forum would decline jurisdiction. The claimant ought at least be made to try. This is true particularly in this instance since several of the families, including one non-Greek, obtained judicial relief in Greece.

To allow the decision below to stand will have the effect of unduly weighting the sixth factor plus misinterpreting the Gulf Oil case.

This Court should grant certiorari to provide further guidelines relative to the proof necessary to show accessibility of forum, and delineate the relationship between Gulf Oil and Lauritzen.

Moreover, the decision below is contrary to decisions in other circuits. In Nunez-Lozano v. Rederei, 634 F.2d 135 (5th Cir. 1980) all eight factors except

place of contract turned out negative. The court had no difficulty declining jurisdiction.

The Second Circuit in Frangiskatos v. Konkar Maritime Enterprises, 471 F.2d 714 (1972) approved the district court decision 353 F.Supp. 402 declining jurisdiction. As in our case a Greek attorney acting as an expert witness, opined that Greek courts would accept jurisdiction.

In Zouras v. Menalaus Shipping Co., 336 F.2d 209 (1st Cir. 1964) an injured Greek seaman libeled his Liberian flag vessel which was owned by a Liberian corporation. He sustained his injuries on the high seas. The First Circuit sustained the dismissal by the district court and commented "...we cannot see that any injustice whatever would result in relegating the libellant to his home forum for determination of whatever legal rights he might have." Zouras, supra at 211.

The closest case in point out of the

Ninth Circuit is a district court decision, Mihalinos v. Liberian SS TRIKALA, 342 F.Supp. 1237 (S.D. Calif. 1972). There, in declining jurisdiction of a Greek seaman's claim for wages and damages against the vessel owner, the court noted that the courts of Greece had not been shown to be inaccessible. There, unlike our court below, the burden was put on the foreign national to show that the courts of his country were not available.

The decision below conflicts with these decisions and therefore a Writ of Certiorari should be granted.

The last point concerns the claims of the Greek families. Wholly unexplained is the district court's failure to decline jurisdiction as to the Greek seamen whose claims were pursued by their families living in Greece. Certainly they have access to Greek courts.

This Court should grant certiorari to

make it clear that the rights of seamen or their families can rise no higher than the merits of their own circumstances and that they will be given no special consideration just because their claims are joined with those of other nationalities.

Furthermore, retention of jurisdiction over the Greek claims is in conflict with Morewitz v. Ambrose Compania Maritima, S.A., 614 F.2d 379 (4th Cir. 1980), Fitzgerald v. Liberian S/T CHRYSSI P. GOULANDRIS, 582 F.2d 312 (4th Cir. 1978) and Bekris v. Greek M/V ARISTOTELES, 437 F.2d 219 (4th Cir. 1971).

The Fourth Circuit was confronted with the same circumstances as presented here in the above three cases. In each instance the death or injury occurred on the high seas, the seamen were Greek, the flag was either Liberian or Greek, the defendant's business was operated in Greece, and the samen contracted for employment somewhere outside of the United States.

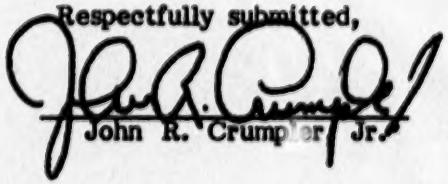
However, in each case jurisdiction was declined with a cryptic remark concerning the obvious availability of Greek courts for Greek seamen. See, e.g., Bekris, supra at 221.

The Fourth Circuit Court of Appeals is guilty of issuing inconsistent opinions. This Court by exercise of its supervisory powers can act to correct this abuse of a judicial obligation.

CONCLUSION

Petitioner respectfully submits that the Court should grant a writ of certiorari and reverse the decision of the court below.

Respectfully submitted,



John R. Crumpler, Jr.

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1321

Stephen J. Morewitz, Administrator, d.b.n. of the Estate of Constantinos Stamatis, deceased;
Stephen J. Morewitz, Administrator of the Estate of Christos Passalis, deceased;
Stephen J. Morewitz, Administrator of the Estate of George Marangos, deceased;
Stephen J. Morewitz, Administrator of the Estate of Gerassimos Markatos, deceased;
Stephen J. Morewitz, Administrator of the Estate of Moses Egbonim, deceased;
Stephen J. Morewitz, Administrator of the Estate of Mukhtar Ahmed, deceased;
Stephen J. Morewitz, Administrator of tne Estate of Augustus Edoro, deceased;
Stephen J. Morewitz, Administrator of tne Estate of Afam Esumei, deceased;
Stephen J. Morewitz, Administrator of the Estate of Khalid Sultan, deceased,

Appellees,

v.

General Development & Shipping Enterprises Co., Ltd.,

Appellant,

and

Imbros Shipping Co., Ltd.; Continental Lines, S.A.; Continental Lines (Armement), S.A.; Federal Commerce and Navigation (1974) Ltd.; Contramer, S.A.; Neptune International Shipping, Ltd.; Neptune International Shipping; Lone Star International, Inc.; Lone Star International Ltd.; Lone Star Shipping; Lone Star Shipping, Inc.; Quebec Cartier Mining Co., Std.; all foreign corporations or associations, and George A. Tsourinakis, a non-resident, as owners and/or operators of the Cyprus M/V IMBROS; Ryan Stevedoring Corp.; Ryan Walsh Stevedoring Co.; Alabama Wood Treating Corp. all foreign corporations or associations,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. John A. MacKenzie, Chief Judge.

Argued April 6, 1981 Decided April 23, 1981

Before WINTER, Chief Judge, RUSSELL, Circuit Judge, and ANDERSON*, District Judge.

John R. Crumpler, Jr. (Seawell, McCoy, Dalton, Hughes, Gore & Timms on brief) for Appellant; Burt M. Morewitz (Herbert Lebovici; Thomas M. Breen on brief) for Appellee.

* Hon. G. Ross Anderson, Jr., United States District Judge for the District of South Carolina, sitting by designation.

PER CURIAM:

Defendant, against whom a number of judgments for wrongful death on the high seas were entered, appeals contending that the district court erroneously denied its motion to quash service of process and that the district court erroneously denied its motion to decline jurisdiction. We affirm.

From our examination of the record, we are persuaded that the defendant's contacts with the State of Virginia were sufficient to satisfy the requirements of due process of law and the Virginia long-arm statute. We also do not think that the district court abused its discretion in concluding to exercise jurisdiction notwithstanding defendant's claim of forum non conveniens. The doctrine of forum non conveniens "presupposes at least two forums in which the defendant is amenable to process." Gulf Oil Co. v. Gilbert, 330 U.S. 501, 506-07 (1947). The district court found that no alter-

native forum was available to some, if not all, of the plaintiffs, and that finding is not clearly erroneous.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Newport News Division

RUTH A. MOREWITZ,
ADMINISTRATRIX ETC., ET AL

Plaintiff,

v.

Civil
Action No.
76-103-NN

IMBROS SHIPPING CO., LTD.,
ET AL.,

Defendants.

MEMORANDUM ORDER

I

Background

On December 18, 1975, the SS IMBROS. sailing under the flag of Cyprus, was lost with all hands in the Bermuda Triangle. She had been carrying a cargo of railroad ties from Mobile, Alabama to Port Cartier, Quebec, Canada. At the time of her loss, the IMBROS had a multinational crew, including ten Greeks, three Nigerians, two

Pakistanis, one Egyptian, and one Jordanian.

In July 1976, plaintiff qualified in the Circuit Court of Newport News, Virginia, as Administratrix of the estates of four Greek crew members. Plaintiff thereupon filed suit in Newport News Federal District Court on behalf of her decedents, alleging a plethora of causes under 46 U.S.C. §§596-601, 608; under 46 U.S.C. §761 et seq.; under 54 Stat. 1693; under the general maritime law, under the laws of Cyprus; under the British Fatal Accidents Act; and under any other treaty, convention, statute, or law which might apply. Since filing the original complaint, plaintiff has also sought to pursue the claims of the estates of two Nigerians and a Pakistani, all members of the ill-fated crew.

Among numerous defendants, General Development and Shipping Enterprises Co., Ltd., ("General Development"), is a Cypriot corporation which "managed" the IMBROS. General

Development handles only vessels owned by George Tsourinakis, a Greek citizen and resident. Mr. Tsourinakis and his wife are apparently the sole shareholders of General Development.

Defendant General Development admits that during the period from July 26, 1973 to October 2, 1976, four of the ten vessels which it "managed" made seventeen calls at Hampton Roads, Virginia, staying a total of at least forty-five days. General Development further admits that in December 1975, the month when the IMBROS was lost, it had sent its Port engineer to Hampton Roads to perform tasks in connection with re-delivery from charter of another vessel managed by it. General Development's activities in Virginia also included a variety of ancillary transactions such as appointment of agents in connection with the vessel visits. Defendant has had numerous other contacts with the United States, such as taking extraordinary maintenance and signing on several seamen for the IMBROS at

American ports.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure, plaintiff secured service on General Development through the Clerk of the Virginia State Corporation Commission, in accordance with § 8-60 Code of Virginia. Defendant has moved this Court to quash service, or in the alternative, to exercise its discretionary powers to decline jurisdiction.

II

Issues

Section 8-60 of the Code of Virginia extends amenability to suit in Virginia in admiralty cases. Grevas v. M/V OLYMPIC PEGASUS, 557 F.2d 65, 68 (4th Cir. 1977). Therefore, the first issue before us is whether subjecting General Development to jurisdiction in the Virginia forum would "offend" 'traditional notions of fair play and substantial justice.'"

See International Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945). In deciding this issue, a court should consider "the relationship among the defendant, the forum, and the litigation" to determine whether exercising jurisdiction over the defendant would be fundamentally fair to all parties under the Fifth Amendment. See Shaffer v. Heitner, 433 U.S. 186, 204 (1977).

Even if the minimal standards of due process are satisfied, however, we must consider an additional issue: whether Virginia provides a comparatively convenient forum. The exercise of jurisdiction over the instant case is a mater within our sound discretion, based on the facts and circumstances. Canada Malting Co. v. Patterson S.S. Ltd., 285 U.S. 413, 421 (1932). In wielding this discretion, the Court must consider the totality of circumstances related to the comparative convenience of adjudicating the

instant case in Virginia, including: the availability and adequacy of alternative forums open to plaintiff; the effect of retaining jurisdiction on important admiralty policy concerns; the litigational relationship of the controversy sub judice to the forum, such as the accessibility of witnesses and evidence; and the substantve nexus between the forum and the litigation at bar, such as the residence of each party, the situs of origination of plaintiff's cause of action, and the governing law as determined under Lauritzen v. Larsen, 345 U.S. 571 (1953), and Hellenic Lines Limited v. Rhoditis, 398 U.S. 306 (1970). See Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947). See generally Note, "Forum Non Conveniens," 44 Fordham L. Rev. 413; R. Robol, Admiralty's Adjudiatory Jurisdiction: A Functional Analysis 13-16 (unpublished Honors Thesis, Harvard Law Library Permanent Reserve).

III

Discussion

A

Due Process Requirements for Exercising Adjudicatory Jurisdiction Over General Development

General Development's relationship to this forum where plaintiff has brought suit, on the facts and circumstances of this particular case, suffices for purposes of due process under the Fifth Amendment. Vessels managed by defendant made many calls from July 1973 to October 1976, injecting General Development into various ancillary transactions. Personnel from General Development engaged in substantial activities in Hampton Roads during the very same month when the IMBROS disappeared. We therefore determine that subjecting defendant to suit in Virginia would be fundamentally fair to all parties in light of the totality of circumstances in the

instant case.

B

Comparative Convenience of the Virginia Forum

Defendant has failed to persuade us of the sine qua non for dismissal on grounds of forum non conveniens: the availability to plaintiff of an alternative and adequate forum. See Gulf Oil Corp., 330 U.S. at 508. The conflicting evidence concerning the adequacy of plaintiff's remedy in Greece, given the fact that the cause of action did not arise there and that defendant is not incorporated under Greek law, leaves us unconvinced that justice would be served by relinquishing jurisdiction. Crewmen, other than Greek Nationals, under the circumstances of this case, do not have access to the broader sweep of Greek law.

Nor are we persuaded that adjudication in Greece would accrue any significant litigative advantages. The record fails to

demonstrate that either witnesses or evidence are more accessible in Greece. On balance, Virginia offers a comparatively convenient location for centralizing the various litigations raised by plaintiff's suits.

IV

Conclusion

The motions to quash service of process and decline jurisdiction are both DENIED.

It is so ORDERED.

(signed by) John A. MacKenzie
United States District Judge

Norfolk, Virginia

August 24th, 1978.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Newport News Division

RUTH A. MOREWITZ,
ADMINISTRATRIX OF THE ESTATE
OF CONSTANTINOS STAMATIS, ETC.

Plaintiff,

v.

Civil Action No. 76-103-NN

IMBROS SHIPPING CO., LTD.,
ET AL.

Defendants.

MEMORANDUM ORDER

The purpose of this Order is to decide the motion of defendant Imbros Shipping Co., Ltd. (Imbros) to quash service of process. We express no opinion on the two pending motions of defendant General Development and Shipping Enterprises, Co., Ltd. to quash service of process as to it.

On December 18, 1975 the Cyprus SS IMBROS was lost at sea with all hands while carrying a cargo of railroad ties from Mobile,

Alabama, to Port Cartier, Quebec, Canada. On July 14, 1976 the plaintiff was appointed as Administratrix to the Estates of four Greek crew members who perished in the disaster. On November 19, 1976 the Secretary of the Commonwealth of Virginia was served with process as the agent of defendant Imbros under the Virginia "long-arm" statute, Code of Va. §8-81.1 et seq. (1976 Supplement). It is this service which Imbros seeks to quash. In her Second Amended Supplement Complaint, plaintiff seeks: (1) damages for wages due each decedent and liquidated damages under 46 U.S.C. §§596-597 because of defendants' failure to pay such wages, and (2) damages for the wrongful death of each decedent.

Code of Va. §8-81.2(a)(1) provides:

> A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's
>
> (1) Transacting any business in this State...

We agree with plaintiff that §8-81.2(a)(1) has been construed to require only one business transaction in Virginia if that transaction gives rise to the liability asserted. Plaintiff's Brief 4-6, citing McGee v. International Life Insurance Co., 355 U.S. 220 (1957); Kolbe, Inc. v. Chromodern Chair Co., 211 Va. 736, 180 S.E.2d 664 (1971). The problem is that plaintiff has not alleged a business transaction in Virginia which has given rise to any liability asserted.

A liability cannot arise until a duty is wed, and no duty was owed to any of these four decedents until they signed the Articles of the vessel. The only relevant transaction that plaintiff alleges is that the Articles for the Cyprus SS IMBROS were opened at Hampton Roads, Virginia on April 1, 1974. However, decedent Marangos did not join the vessel and did not sign the Ship's Articles until April 10, 1975 at West Palm Beach, Florida; the other three dece-

dents joined the vessel and signed the Articles at New Orleans, Louisiana in early October, 1975. The evidence is that this vessel was never in Virginia while these decedents were members of its crew.

We conclude: (1) that plaintiff has not shown a single transaction in Virginia which has given rise to the liability asserted in this suit, (2) that the service of process on the Secretary of the Commonwealth as agent of defendant Imbros must be quashed, and (3) that this Court has no jurisdiction over the person of defendant Imbros.

We express no opinion on the issue of this Court's subject matter jurisdiction over either the wage claims or the wrongful death claims. We have only considered whether it would offend "traditional notions of fair play and substantial justice" to subject defendant Imbros to a judgment in personam when it is not present within the Eastern District of Virginia,

and plaintiff cannot show a single business transaction within this forum. The opening of Articles before any of the decedents joined the vessel is not such a business transaction affecting them.

For the reasons stated herein, it is ORDERED that the motion of defendant Imbros Shipping Co., Ltd. to quash service of process is GRANTED.

(signed by) John A. MacKenzie
United States District Judge

Norfolk, Virginia

January 20, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Newport News Division

RUTH A. MOREWITZ,
ADMINISTRATRIX OF THE ESTATE
OF CONSTANTINOS STAMATIS, ETC.

Plaintiff,

v.

Civil Action No. 76-103-NN

IMBROS SHIPPING CO., LTD.,
ET AL.

Defendants.

DEPOSITION OF MR. NICHOLAS DOMVROS

This is a deposition of Mr. Domvros taken pursuant to notice and Court order. This deposition is being taken in Piraeus, 3 Akti Miaouli, on August 18th, 1977.

Let the record reflect that Mr. Nicholas Domvros was sworn by John Crumpler and that Mr. Evangelos Tsouroulis was duly sworn by the same as interpreter where necessary:

Crumpler : State your full name.

Domvros : Nicholas John Domvros.

Crumpler : State your age and home address.

Domvros : 38 years old 22-24, Syrangiou Street, Piraues.

Crumpler : Let the record show that Mr. Pavlakis objects to this deposition because it is not before a Notary as in the Notice of Deposition and because there is no shorthand writing.

Let the record further reflect that the defendant will have Mr. Domvros execute the deposition after typing before the American Consul.

Crumpler : Mr. Domvros, are you a qualified Attorney in Greece?

Domvros : Yes.

Crumpler : For how long?

Domvros : I am an Attorney at Law since 1965 admitted in the Courts of Piraeus and Athens and I was later admitted

as well to the Court of Appeals, Athens.

Crumpler : What Law Firm are you a member of?

Domvros : I am a member of the Law Firm Deucalion Rediadis and Sons, right from the beginning of my legal career.

Crumpler : Did you represent the Owners of the "IMBROS" in connection with claims by crew members as a result of the vessel's sinking in December 1975?

Domvros : We, our Firm, represents the vessel which is covered by the Club known as the West of England Association.

Crumpler : What crew members did you represent the Club for?

Domvros : As far as I know, the families of Vassilakaki, Costoglou, Soursou, Sandalaki, Zorba, Tsabasi and Jordanian Zahir Ahmad, had indicated to maintain life claims as a result

of the sinking of the vessel called "IMBROS".

Crumpler : Which of these crew men were Greek?

Domvros : All of them, except the last one.

Crumpler : Were these families represented by Attorneys in Greece?

Domvros : Yes.

Crumpler : Were any Law Suits filed in Greece?

Domvros : The families of Soursou, Sandalaki, Zorba and Tsambasi also of the foreigner Jordanian filed suits in Greece but so far as we are concerned we only had to attend to the cases of Vassilakaki and Costoglou as the other cases had been handled by Owners themselves.

Crumpler : Have any of these suits been concluded?

Domvros : None of the cases we were handling was heard up to the time we were

attending thereto but I understood later that the actions filed on behalf of Tsambasis and of Zorbas had been heard, Owners' lawyer having attended.

Crumpler : Were any compromised?

Domvros : Our office attended to the compromise settlement of the suits filed by Soursou and Zahir Ahmad. As far as I know, the Sandalakis claim was also settled by compromise but not through our office.

Crumpler : Did you contest the jurisdiction of the Greek Courts?

Domvros : On the contrary, I accepted the jurisdiction of the Greek Courts. Also, I compromised two other claims by the families of Master Vassilakakis and A.B. Seaman Costoglou where no actions were filed. I accepted jurisdiction in

Greece, when concluding the compromise settlements in Court in respect of the last two claims too.

Crumpler : Were any of these compromises approved by the Greek Court.

Domvros : All the compromise settlements were effected before the Court of First Instance of Piraeus (Labour Section).

Crumpler : Do you have a copy of these compromises?

Domvros : Yes, of course, there are copies of the relevant Acts of Minutes before the above mentioned Court and releases before the American Consul, except in the case of the Soursou family where we only have the Act of Minutes of the Court. I mean about the four settlements, i.e.:

Vassilakakis, Costoglou, Soursou and

Zahir Ahmad, Jordanian, effected by me.

Crumpler : Let the record reflect that the stenographer is initialling each of these seven documents which will be photocopied.

Crumpler : What rights do have the Greek seamen such as the families of those two compromised under Greek Law?

Domvros : The families of the men lost are entitled to compensation under the Greek Workmen's Compensation Act No. 551 of 1914 in certain circumstances plus reasonable funeral expenses, but, on the other hand, they may have claims under the Civil Code again under certain circumstances. Also the heirs are entitled to any balance of outstanding earned wages and also to reasonable compensation

for loss of personal effects/ professional effects.

Crumpler : Do the families have the right in both 551 compensation and a Civil Action?

Domvros : No, they cannot claim under both Workmen's Compensation Act 551 and Civil Code. They must elect as per Article 16 of the Workmen's Compensation Act 551.

Crumpler : Must the families prove negligence for 551 compensation?

Domvros : No, under the Workmen's Compensation Act 551, there is "objective" responsibility on the part of the Shipowner to compensate the families even for blameless accident. On the contrary, for the Civil Code provisions to apply it is necessary to prove "fault" which would include negligence and/or unseaworthiness.

Crumpler : Were the compromises paid under 551 or under the Civil Actions/Code?

Domvros : The settlement effected were concluded on the basis of the provisions of the Workmen's Compensation Act 551.

. . . .

Pavlakis : Mr. Domvros, you spoke about the compensation provided by Law 551. Is this a full recovery of damages for the families of the deceased? Is it a fixed sum calculated on the basis of the wages of the deceased?

Domvros : Yes, it is a fixed sum calculated on the basis of the yearly earnings, not damages at Common Law.

Pavlakis : Might this compensation be much less than full recovery of damages?

Domvros : It is less normally.

Pavlakis : Is there any provision in the Greek

Law about granting full recovery as distinguished from said compensation 551 because of unseaworthiness of the ship?

Domvros : For the application of the provision of Civil Code which provide for damages in case of "fault", it is necessary for a plaintiff to be able to prove "fault" of the party against which claim is made, including negligence and/or unseaworthiness which depends on the merits of the particular case.

Pavlakis : So, I am right in saying that negligence or unseaworthiness alone cannot be a basis for full recovery.

Domvros : Whilst under the Greek Civil Code a person who has sustained loss out of any other persons "fault" is entitled to claim damages (no distinction being made as to breach

of regulations or not) the tendency of our Court is to obtain an award for damages, one has to prove that negligence or unseaworthiness out of fault, resulted to, or provoked breach of regulations and the accident is to be attributed thereto.

Pavlakis : This is also true about injury cases, not only death cases.

Domvros : Yes.

Pavlakis : Now, regarding negligence.

Negligence alone is enough in order to sue according to the Civil Law for full recovery, even if it is gross negligence? - as distinguished from compensation of Law 551.

Domvros : According to Article 16 of the Workmen's Compensation Act 551, right to full recovery under the Civil Law is permissible in case of Fraud/Intentional Act on the part of

the employer of failure to observe provisions relating to safety measures specifically provided for in the Law, provided that the accident is due to such failure, as I have already stated.

Pavlakis : So, I am correct stating that only negligence without such non-observance of safety regulations, even if it is a gross negligence, is not enough to give right to sue for full recovery?

Domvros : Yes.

Pavlakis : It is true that by non observance of specific safety regulations the practice of the Greek Courts means regulations specifically provided in writing in the Law for the case under consideration, so that it was considered that the failure to observe the General provision of

section 662 of the Greek Civil Code about the obligation of the employer to provide employees with a safe, healthy and proper place of work as well as of other similar general provisions in the Greek Law, does not constitute a non observance of safety regulations according to said Article 16 of Law 551?

Domvros : As far as I know, according to recent decisions of the Greek Courts, in fact it is required to have a breach of the provisions of Article 662 of the Civil Code and similar general provisions, though I cannot exclude the contrary.

Crumpler : We will attach as exhibits Articles 16 and 551 and 662 of the Civil Code.

Pavlakis : Is it true that as a result of the above interpretation the practice of

the Greek Courts is to accept non observance of specific safety regulations in a very limited number of cases in relation to the whole of cases.

Domvros : The regulations of working conditions aboard Greek cargo vessels and other specific statutes such as loading regulations, sailing regulations, maintenance and supply of vessels, etc., contain detailed provisions and if a breach of same is established and proved then it is easy to find a non observance of the said specific regulations. I cannot give you a percentage representing this type of claims in relation to the whole number of seamen's accident cases.

Pavlakis : Are these cases less or more than the ones of 551?

Domvros : They are less obviously.

Pavlakis : Can - you presently cite such decisions of full recovery as an example of how the Courts interpret the regulations?

Domvros : I have no such on hand, but by following decisions in journals, etc., I am aware of such decisions.

Pavlakis : If a Greek Court would apply Greek Law to the claims of the surviving dependent relatives of any seaman who died in the loss of the m/v "IMBROS", do you think upon your experience that it would apply any other Law besides Law 551?

Domvros : As far as I know, circumstances surrounding the sinking of "IMBROS" do not give rise to a claim under the Civil Law for full recovery of damages, but only in accordance to Law 551.

My above opinion is strengthened by the fact that the Lawyers who filed Actions against the vessel elected as the basis of their claims the Workmen's Compensation Act 551, because they did not find any facts upon which to base a claim under the Civil Law.

Pavlakis : Do you know the sums collected by the four families who settled the claims?

Domvros : Vassilakakis Drs. 860,000.-

Soursos " 640,000.-

On the basis of Act of Minutes:

Plus Drs. 100,000.-

On the basis of a receipt, a copy of which I attach herewith, as a supplementary financial assistance.

Crumpler : We now have attached additional receipt for Soursos' settlement marked H.C.(s).

Domvros : I continue:

Costoglou Drs. 330,000.-,

and,

Jordanian Zahir Ahmad 200,000.-

Pavlakis : Do you know what each of these families might get in full recovery of their damages under any Law? - providing for such full recovery? -

Domvros : According to the application of the Greek Civil Law in respect of which I can speak, compensation for full recovery, could have been greater but I cannot specify the amounts because this requires a calculation of a lot of factors, e.g.: the age of the deceased, the wages, the heirs that survived him, if the heirs were supported by him and to what extent, the needs of the next-of-kin, etc.

Pavlakis : Is it true that the Act of Minutes which were marked as exhibits are not court decisions but they were signed at the secretariat of the Court, I mean particularly that there had been no judicial examination on the various issues of each dispute?

Domvros : Said documents do not constitute a Court decision but, according to the provisions of the Workmen's Compensation Act 551 and the Code of Civil Procedure they are deeds of settlement agreed and concluded before the competent Judge of the Labour Section of the Court of First Instance of Piraeus, following thorough examination of facts as in the Act of Minutes by the Judge and the duly authorized lawyers of the family.

The thorough examination of the document by the judge is always done and the minutes are always signed in the presence of the Judge. All the more as the cases in question concerned death of samen, large amounts of compensation and the existence of minor children. For the Settlement of the latters (i.e. minor children's) claims, a special Court decision proceeded permitting the compromise settlement and the terms thereof following a resolution of the family Council before the Justice of the Peace. Prior to the signing of the Act of Minutes in Court, the lawyers of the respective parties agree the contents of the Act of Minutes and of the releases as and when drafted.

Pavlakis : Am I correct to say that these Minutes contain the Agreement reached by the parties?

Domvros : Yes.

Pavlakis : ...and that they merely sign it before the Judge as, in other cases, they sign it before the Notary Public?

Domvros : According to section 14 of the Workmen's Compensation Act 551 a binding compromise settlement is allowed to be effected only before the competent Justice of the Peace, but following an amendment of the Code of Civil Procedure in addition to the Justice of the Peace, a judge in the Court of First Instance is also competent, i.e. he has jurisdiction or authority to attend. The same article provides that in no

case the amount of the settlement can be by more than 15% less of the amount of the 551 claim in cases of death and total permanent disability.

Thus, in my opinion settlement of a 551 Law claim before a Notary Public is void and can only constitute a mere receipt of an amount received.

Pavlakis : You speak about the formality to be observed in signing these Minutes while I am asking about the job which the Judge does in this respect - precisely, I am asking you whether the judge examines any witnesses on the merits of the case or if he sees any other evidence or if one reads any memoranda of the parties or if he does anything else except to attend at the signing of the Minutes. I agree that he might

check whether the sum of the settlement is above the 85% of the sum under 551 but do you know any case where he did more than that?

Domvros : During the proceedings of compromise settlement before the Judge, no witnesses are examined, but the Judge checks the accuracy of the contents of the Act of Minutes, the earnings and the method of calculation of the compensation. He satisfies himself that these are in accordance with the Law and he asks the beneficiaries and their lawyers if they agree with the terms of the settlement and if they are satisfied generally with the settlement of the matter. Only after the above checking he goes ahead and signs the Act of Minutes, approving the settlement as within the Law.

Pavlakis : Is it correct to say that apart from checking the correctness of the sum with respect to the one provided by Act 551 and that the parties voluntarily come to the settlement, the Judge is performing no judicial task in connection to this Act of Minutes.

Domvros : The tasks of the Judge in these particular proceedings are judicial and he has the obligation to and does check the observance and application of both the formal and substantive provisions of the Law.

Pavlakis : Is the meaning that the sum of the settlement is not less than the minimum permitted as above by Law 551 and the parties appearing voluntarily and knowingly came to the settlement according to the Civil Procedure Code?

Domvros : Yes, I have explained above.

Pavlakis : Is it conceivable to dispute jurisdiction in this Act of Minutes proceeding?

Domvros : No, because the parties appear voluntarily and following their agreement as permited by our Code of Civil Procedure.

Pavlakis : So, you can't know whether there would be an objection as to Greek jurisdiction, should there be no settlement in the four above cases.

Domvros : Even if the actions had in fact been heard in Greece, I would not raise an objection as to the jurisdiction of the Greek Courts. But, even if it had been raised, it would not have succeeded because the contracts of employment of the deceased had been signed in Piraeus, they were Greeks except for the Jordanian one

and their families lived in Greece, again with the exception of the Jordanian and I also wish to say that recently judgment have been rendered in the cases defended by Owners' lawyer these of Tsambasis and Zorbas, admitting the actions.

Crumpler : In response to the question asked by Mr. Pavlakis I will agree that the compromise proceedings will not establish or deny jurisdiction.

Pavlakis : What about the Jordanian in regard to the Jurisdiction of the Greek Courts?

Crumpler : (The witness at this point is searching his file to see if there is an agreement of employment for the Jordanian deceased crew member too).

Domvros : I did not find an agreement of employment but in the Law Suit filed

by his relatives their lawyer stated that the deceased concluded a contract of work on the 3rd of June, 1975 in Piraeus.

Pavlakis : Do you know whether this contract provided Greek jurisdiction or not?

Domvros : I have not seen it.

Pavlakis : You say that the Court, if there was objection, would not deny Greek jurisdiction regarding the four Greek crew members who filed a Law Suit, do you say the same for the Jordanian too?

Domvros : If he had signed an agreement employment in Pireaus, yes. I am of the opinion that even if he had not signed such contract in Piraeus, the Court would have accepted jurisdiction because of the existence of the vessel's agents in Pireaus plus the entire circumstan-

ces and prevailing conditions of the whole shipping enterprises.

Pavlakis : Have you copies of the decisions you said were issued in the cases of Zorbas and Tsambasis?

Domvros : No, because they have not yet been signed by the Judge due to absence out of the Summer holidays.

Pavlakis : Have you read them?

Domvros : Yes.

Pavlakis : They are awarding the Workmen's Compensation Act 551 compensation?

Domvros : Yes, plus balance of earned wages and loss of personal effects.

Pavlakis : Do you remember the sums?

Domvros : It is something more than Drachmae 600,000.-.

Pavlakis : Was there any objection to jurisdictions in these cases?

Domvros : Having seen the judgments, I realized that Owners' lawyer has not

disputed jurisdiction.

Pavlakis : I am showing to you two decisions of the Athens Court of Appeal, one of the year 1962 concerning a Greek seaman by the name of Bikos and one of the year 1972 regarding a Greek seaman named Emmanuel Psaras. Am I correct that in both cases, the Court of Appeal of Athens - Greece, has held that a Greek Court has no jurisdiction on a suit brought by a Greek seaman against a foreign corporation on basis of injuries sustained in an accident occurring outside of Greece, if the foreign corporation objects to the Greek Courts taking jurisdiction?

Domvros : As I see from the two decisions, as regards BIKOS' case Number 693/1962 the Court declined jurisdiction only regarding the compensation in

respect of pain and suffering (moral damage) and ruled on the other matters on the merits dismissing the action. In the second case, 228/72 it was dismissed due to lack of jurisdiction, but as I see, he seamen in question had not signed the agreement of employment in Greece otherwise the judgment would have said so. I assume this to be the case because this is a very important factor in establishing jurisdiction and the Court would have mentioned in its judgment.

Pavlakis : Now, that you have seen these two decisions, are you still of the opinion that the Court would accept jurisdiction on each one of JESUS RAMON MAYORQUIN who was a citizen and resident of Honduras, CONSTANTINOS STAMATIS who was a

citizen and resident of Greece, CHRISTOS PASSALIS who was a citizen and resident - of Greece, GEORGE MARANGOS who was a citizen and resident of Greece, GERASSIMOS MAKATOS who was a citizen and resident of Greece, in case there would be an objection to Greek jurisdictio?

Domvros : The above two decisions exhibits A and B are the exceptions to the practice of Court precedence on numerous decisions to the contrary. As regards the four Greek seamen's claims mentioned above, they have signed agreements of employment in Piraeus and, according to article 33 of the Court of Civil Procedure, the place of signing of the contract creates jurisdiction and competency of the Greek Courts. All the more as they would be Greek citizens and

their families in Greece. As regards the alien I do not know whether he had signed a Contract of employment in Greece in which case there would be Greek jurisdiction, or whether he signed the Contract abroad in which case upon an objection being taken as to the Courts jurisdiction, possibly the Court would have declined jurisdiction.

Pavlakis : Regarding the four Greeks' families who have pending actions in the U.S.A., in what respect is the position regarding Greek jurisdiction different from the Grek seamen of the exhibits A and B if we assume that they also had signed agreements of employment in Greece.

Domvros : As I have stated here above, there is no possibility for the Court to decline jurisdiction since there are

agreements of employment signed in Piraeus and in view of all surrounding circumstances.

Pavlakis : Could you cite cases in which you have been involved or which you have knowledge where the Greek Court took jurisdiction of claims by the seamen against a foreign Corporation in a case of accident occurring outside of greece when the foreign Corporation objected to the Court taking jurisdiction by either Greek or foreign seamen.

Domvros : I have no such decisions on hand all the more because our Law Firm does not actually raise objections to jurisdiction.

Pavlakis : Do you know whether Greek Courts have ever applied to claims of seamen injured outside of Greece aboard a foreign flag vessel, the

Law of the foreign nation where the vessel was registered?

Domvros : I have never come across a judgment admitting such an application.

Pavlakis : The Law of the Nation in which the shipowning Company was based?

Domvros : I have not seen such judgment apparently because usually in the contract of employment there is a provision for the application of Greek Law.

Pavlakis : The Law of the nation of which the seamen was a citizen?

Domvros : I have not seen such an application but, of course, I do not exclude it.

Pavlakis : Do you think that a Greek Court would apply Cyprus Law to any claims filed by the surviving relatives of seamen who died as a result of the sinking of the M/V "IMBROS"?

Domvros : Probably the Court would have

applied Cypriot Law if Cypriot Law was appropriate under Article 25 of the Greek Civil Code. Article 25 says the applications rising from the contract are regulated by the Law of which the ports have submitted themselves. In the absence of such a Law, the Court would apply the Law which is the appropriate one after all subjects and surrounding circumstances have been given consideration to.

Pavlakis : I am asking, does this information apply in a particular case where there was a possibility for the Law of Cyprus to be applied for Greek or foreign seamen's families in the "IMBROS" case?

Domvros : My opinion is that the Court in this case would have applied Greek Law because the Contracts of Employment

were signed in Greece, the vessel's agents are in Greece, all officers and part crew Greek.

Pavlakis : Does it also apply for the Honduran and the other foreign crew members?

Domvros : If they had signed contracts in Greece, yes.

Pavlakis : Would it be possible that the Greek Court might apply the Law of the countries of which they were citizens.

Domvros : If the Court felt that the proper law of the contract was that of Honduras or of any other foreign country then the Court would have applied such a foreign Law, in the absence of agreement for Greek Law in the contract of employment.

Pavlakis : Could you cite cases in which you have been involved or of which you have knowledge, where the Greek

Court applied foreign Law in claims brought by the seamen against the foreign company because of an accident occurring outside of Greece for Greek or foreign seamen.

Domvros : I do not know of such a case because it is very unusual to object to the Court's jurisdiction and for the Court to decide on such an objection.

Pavlakis : You mention about the application of a foreign Law?

Domvros : Yes.

Pavlakis : As far as you know had JESUS RAMON MAYORQUIN any right to file claims (judged) in Greece and any protection under Greek Law?

Domvros : JESUS RAMON MAYORQUIN and/or his relatives could have protection under Greek Law 551 subject to the provisions laid down therein.

Pavlakis : What do you mean provisions laid down?

Domvros : That there must be beneficiaries within the meaning of Law 551 that they had been mentioned by the deceased and that the seaman and his family lived in Greece at the time of the accident.

Pavlakis : Now you believe that these conditions should control the last one, what was felt with respect to any of the foreign crew members of the "IMBROS"?

Domvros : I think no, except for those living in Greece.

Pavlakis : This is improvable. I show to you the minutes 403 of the year 1976 exhibit which concerns the ZAHER and I ask you to read the second page. This to be on the record.

Domvros : The minutes are as follows: The

said lawyer (for the defendant) stated that the husband of the plaintiff and the plaintiff herself did not reside in Greece at the time of the accident an in the absence of a relative convention with Jordan she is not entitled to compensation under Law 551.

Pavlakis : I asked you to read this and I am asking you whether there was any other right of foreigners in Greece.

Domvros : Yes, there could be in the Civil Code if certain conditions existed.

In the particular case of the widow and relatives of ZAHER, the action had two bases; one was that of Law 551 and in the Civil Code.

Pavlakis : Do you think that the Court would have jurisdiction ever a Jordanian even under the Civil Code?

Domvros : Yes, because I think that Greek Law

is the proper Law of the contract.

Pavlakis : I asked about jurisdiction, I am not asking about applicable Law.

Domvros : Yes, the Greek Courts would be competent for this claim.

Pavlakis : Which would be the contacts with Greece if we took into consideration that the ship was of Cyprus flag, the shipowning company was a foreign company, that he was a foreign citizen and of residence (as well as the claimant family after his death when as far as we know, there was no agreement of employment signed by him in Greece.

Domvros : I have not in my hand his employment agreement but it is stated in the action that in June 1975 in Greece, an employment agreement was signed providing, inter alia, for Greek jurisdiction and also the fact that

the management of the vessel was conducted from Piraeus, the vessels agents are situated in Piraeus and the officers of the vessel were Greek as well as a lot of the other members of the crew and that almost all of the crew members had signed contracts of employment in Piraeus. I cannot see which other Court of any other country had connections other than the Greek Court.

Pavlakis : Would you say the same think for JESUS RAMON MAYORQUIN, if he has not signed a contract of employment in Piraeus?

Domvros : yes, even if he had not assumedly signed a contract in Piraeus because of all of the other points mentioned above, I feel that the Greek Law would be applied and the Greek Court would have jurisdiction. I wish to

Pavlakis : Are you not confusing jurisdiction with applicable Law?

Domvros : Of course not, but I consider that these two are not separate or independent.

Pavlakis : Do you allege that when there are conditions calling for a Law to be applied, there is always jurisdiction of the Law of that country?

Domvros : No.

A60

FIRST ORIGINAL

TIME CHARTER

GOVERNMENT FORM

Approved by the New York Produce Exchange November 6th, 1913—Amended October 20th, 1921, August 6th, 1931, October 34d, 1946.

THIS CHARTER PARTY, made and concluded in Hamburg 7th day of June, 1973. Between Messrs. Imbros Shipping Co. Ltd., Nicosia Owners of the good Cyprus (Motorship) "I M B R O S" of 3.284 tons gross register, and 2.412 tons net register, ... and Messrs. Contramar S.A. Charterers of the City of Antwerp.

WITNESSETH, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for 36 months timecharter within below mentioned trading limits. Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers

remaining responsible for the fulfillment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, at ANTWERP in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in Clause No. 6), as the Charterers may direct, in such lawful trades, between safe port and/or ports within the Institute Warranty Limits - excluding Cuba and Israel. See also clause 32. _____ as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery

and equipment for and during the service.

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other such expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners.

Fumigations ordered because of illness of the crew to be for Owners account. See clause 30.

3. _____

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of 1.550.—including overtime _____ United States Currency per day commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a day; hire to continue until the hour of the day of her re-delivery in like good order and

condition, ordinary wear and tear excepted, to the Owners (unless lost) at world wide within trading limits as per lines 32/33 _____ unless otherwise mutually agreed. Charterers are to give Owners not less than 21/14/7 days notice of vessels excepted date of re-delivery, and probable port.

ADDITIONAL CLAUSES TO CHARTER PARTY
M/S "IMBROS"
dated 7th June, 1973

32. Charterers' option of breaking warranties they paying the extra insurance premiums and in case of breaking warranties Charterers to pay also for eventual crew extra payments.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

RUTH A. MOREWITZ,
Administratrix of the Estate
of Constantinos Stamatis,
deceased, etc.

Plaintiffs,

v.

IMBROS SHIPPING CO. LTD.,
et als.

Defendants,

DEPOSITION OF GEORGE TSOURINAKIS

This is a deposition of Mr. Tsourinakis taken pursuant to notice and Court order. This deposition was taken in Piraeus, 3 Akti Miaouli Str., on August 18th, 1977.

Mr. Crumpler : Let the record reflect that Mr. Tsourinakis was sworn by Mr. Crumpler. Would you state your full name and address please.

Mr. Tsourinakis : George Tsourinakis is, Afainss 4, Palleon, Psychikon.

Mr. C. : Age.

Mr. T. : 50.

Mr. C. : Please would you tell us if this is your only resident address at the moment.

Mr. T. : It is the only one, that I rent.

Mr. C. : Do you have any residences in any other country other than Greece.

Mr. T. : No.

Mr. C. : When and where were you born.

Mr. T. : April 1940 in Piraeus.

Mr. C. : What citizenship.

Mr. T. : Greek.

Mr. C. : Any other.

Mr. T. : No.

Mr. C. : Business address.

Mr. T. : Philellinon 11-15 moving to new offices shortly at Affendouli 2 Piraeus.

Mr. C. : What is your occupation.

Mr. T. : Ship owner.

Mr. C. : How long for.

Mr. T. : The company is my family business since I was born but I have been involved in the business since 1962.

Mr. C. : Referring you back to 1975 particularly December 1975 do you know of a vessel called the Imbros.

Mr. T. : The Imbros registered owner was the Imbros Shipping Co.

Mr. C. : You were the sole stockholder of the Imbros Shipping Co. and at that time was there a managing company of the Imbros.

Mr. T. : At that time we had GDSE company which we called managers but of course practically we were the management members. We can explain the relationship of the two companies later.

Mr. C. : Maybe it is better now. Would you tell us first how it was formed and who was responsible for its formation.

Mr. T. : I was.

Mr. C. : Could we get on to how it was formed and who was or is the owner of GDSE.

Mr. T. : I am.

Mr. C. : Now would you please tell us the purpose for the formation.

Mr. T. : Yes. Having more than on ship and hoping to have more in the future I felt that instead of having to refer to the various people with whom I must deal on each particular company separately and for Insurance purposes for various contracts, stores, provisions, oils, fuels and so on and for the purpose of running my shipping business in a more practical manner I have formed GDSE and we used to own ourselves the GDSE group of companies, there are certain advantages necessary to get somewhere and make a deal and present ourselves as a sole owner and as the owner of more than one vessel. If anyone asks who manages the vessel you can say I manage the vessel because this is a fact but I have to have

a name for presentation purposes for this reason I decided to form this company in 1972.

Mr. C. : How many employees did you have at then and now.

Mr. T. : I have now 26 or 27, but then perhaps a couple of people less because we had less ships at that time.

Mr. C. : Did you have offices in the U.S. or use an agent on a continuing a day to day basis.

Mr. T. : No because we never had business in the U.S. all of our vessels which called in the U.S. were on Time Charter.

Mr. C. : Did Imbros shipping have an office in the U.S.

Mr. T. : No.

Mr. C. : Do you own any property in the U.S.

Mr. T. : No.

Mr. C. : Do you have any bank accounts in the U.S.

Mr. T. : No.

Mr. C. : Does GDSE have any bank accounts in the U.S.

Mr. T. : No.

Mr. C. : Does GDSE own property in the U.S.

Mr. T. : No.

Mr. C. : As far as the details of the managing of the company who handles these details.

Mr. T. : Well my employees handle them under my direction but certain departments deal with financial claims, book-keeping, crew matters these are all people that I have chosen. Some things are handled by them following my wishes of course but some decisions are being made by me. They can make decisions over problems that are easily decided but all the major decisions are made by me.

Mr. C. : That was my next question are these any decisions made here that you are not

aware of or that you do not make yourself.

Mr. T. : I make every decision and my worry is to make as much profit as possible. GDSE is just the title company it is a convenience it is not for any practical reason but also it is not for any profit or loss or have any financial basis.

Mr. C. : Is there any arrangement between GDSE and any of the vessel owning companies.

Mr. T. : No because it would be possible to say that I in my own companies would assign commission to GDSE then it would look as though I put my hand from one pocket to another pocket since there is no tax reason in Greek law for shipping owners. They do not save any tax by presenting this to the tax people ship owners are taxed by GLT. Further there is no practical tax reason for me to do such a thing.

Mr. C. : In other words GDSE receives no cash other than the cash that can come as to

the salaries and expenses with managing of ships.

Mr. T. : We cannot say what GDSE receives. It is the policy that each particular company receives salaries and expenses related to its own needs.

Mr. C. : I was going to ask you that next, the expenses we are talking about salaries telex's they are split up and placed on the orders.

Mr. T. : We cannot charge directly to the vessel as such the salary rent and other items.

Mr. C. : In 1975 do you recall who the vessels and directors of GDSE were.

Mr. T. : The same as they were today.

Mr. C. : What is that. You mean the Cyprus companies.

Mr. T. : GDSE and Imbros were both Cyprus companies. I was the president and I think that Mr. Troianos was the secretary

because I had so many Cyprus companies due to the Greek government. I cannot have a Greek flag vessel owned by a Cyprus Company so I changed.

Mr. C. : What is the relationship between Contramar and GDSE.

Mr. T. : The continental lines were the owners of the vessel, the Imbros. It was called the TECUNUMAN.

Mr. C. : Who was responsible for the financing of it.

Mr. T. : My bank asked for three years time charter. You may not take it for three years at least, this time charter started in May 1973 and it was to finish in May 1976.

Mr. C. : Were there any other directors or shareholders other than these.

Mr. T. : No.

Mr. C. : Do you own any interest in Contramar.

Mr. T. : No.

Mr. C. : Have you ever.

Mr. T. : No.

Mr. C. : Was in other words the only relationship between Imbros and Continental Lines and GDSE was that it was being paid for and chartered by the same person up to its loss.

Mr. T. : Finance was received from Bates' Bank in London.

Mr. C. : Imbros was flying a Cyprus flag the entire time it was owned by you.

Mr. T. : Yes.

Mr. C. : Getting back to GDSE a second do you know how many shares there are.

Mr. T. : One hundred as far as I know or a thousand.

Mr. C. : All owned by you.

Mr. T. : One per cent is owned by my wife. It takes two people to make a company.

Mr. C. : Now to the accident. We have four Greek crewmen involved could you tell me when and where these men went on board the

vessel.

Mr. T. : Mr. Passalis went on board the vessel in Puerto Barrios on the 19th of September 1975.

Mr. C. : Where is Puerto Barrios.

Mr. T. : Somewhere in Mexico.

Mr. C. : It is not in the U.S.

Mr. T. : No. Then Mr. Stamatis in Santo Thomas Castilla on the 16th of September 1975, Mr. Markatos boarded in New Orleans 3rd October 1975 and Mr. Marangos in West Palm Beach on the 9th April 1975. This information was given to me by the Crew Dept.

Mr. C. : Being Greek Crew men where did lthey sign their employment contracts here in Piraeus.

Mr. T. : Usually a couple of days before their flight, yes.

Mr. C. : When they went on board the vessel would they have signed any articles of enrollment like Liberian Articles.

Mr. T. : I really do not know perhaps my crew department can tell you.

Mr. C. : There was also an Equadorian do you know where he joined the vessel.

Mr. T. : No.

Mr. C. : The record will show that there have been four of your vessels calling in Virginia in the last four years. The Imbros, the T. Alexandros, the Buenos Aires and the Rio de Janeiro.

Mr. T. : When these vessels called in these ports all reasons for this were the Time Charterers.

Mr. C. : What if anything would you have to do with picking out the ports that they went to.

Mr. T. : Nothing at all. The Time Charterer has the right to take the vessel to any ports of his choice as long as they are inside warrant limits and that they are not at war or not permitted to ship as of any nation

but we had no problem there.

Mr. C. : Who decided what cargoes were to loaded and where the cargoes were to be discharged.

Mr. T. : The Time Charterers were responsible for the vessels sub charter. I think the Alexandros and the Imbros have been going a few times sub chartered because the Time Charters have the right to do so.

Mr. C. : If any of these vessels were on sub charter would the sub charterer have the right to choose the port and the cargoe.

Mr. T. : Certainly.